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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,379	09/03/2003	Jason P. Eaton	01-24	4174
30031	7590	03/11/2005	EXAMINER	
MICHAEL W. HAAS, INTELLECTUAL PROPERTY COUNSEL RESPIRONICS, INC. 1010 MURRY RIDGE LANE MURRYSVILLE, PA 15668			DOSTER GREENE, DINNATIA JO	
		ART UNIT	PAPER NUMBER	
		3743		

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/654,379	EATON, JASON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dinnatia Doster-Greene	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 9/3/03 AND 6/16/04.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-17 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: *Detail Action*..

## DETAILED ACTION

### ***Claim Objections***

Claims 1, 3, 4, 7, 8, 11, 12 and 16 are objected to because of the following informalities: (i) in claim 1, line 7, the term "he" should be changed to --the--.

(ii) in claims 3, 4, 7, 8, 11 and 12, the phrase "an includes" should be changed to --includes--.

(iii) in claim 16, line 2, a colon should be inserted after the term "comprising".

(iv) in claim 16, line 6, the term "mash" should be changed to "mask"

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-4, 6-12 and 14-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Raje et al. (U.S. Patent No. 6,823,869). In Figs. F19-F30, Raje discloses a gas delivery mask (10) comprising a mask shell (40) and a forehead support (Figs. 1, 22, 44, and 46). The forehead support comprises a support arm (252, Fig. 22) associated with the mask shell (40, Fig. 19), a forehead support bracket (320, Fig. 22) and a connecting assembly (312, Figs. 21, 22, 26 and 27). The connecting assembly (312) couples the forehead support bracket (320) to the support arm (252) such that the forehead support bracket (320) is self-aligning on a patient as the patient dons the mask (col. 22, line 10- col. 23, line 53).

Regarding claims 2, 6, and 10 in Figs. F19-24, Raje discloses an adjustment assembly (306) for adjusting the relative position of the forehead support and the mask shell such that the forehead support is moveable in at least two dimensions relative to the mask shell (col. 22, line 38- col. 23, line 32).

Regarding claims 3, 7, and 11, Raje discloses in Fig. F21 wherein the adjustment assembly (306) includes an arcuate attaching member associated with the mask shell, and wherein a first portion of the support arm is moveably mounted to the arcuate attaching member.

Regarding claims 4, 8 and 12, Raje in col. 22, lines 16-19 and Fig. 10 discloses wherein the adjustment assembly (306) includes a plurality of teeth disposed on the arcuate attaching member, and wherein the first portion of the support arm includes a flexible portion adapted to engage at least one of the plurality of teeth.

Regarding claim 9, Raje discloses a gas delivery mask comprising a mask shell and a forehead support. The forehead support comprises a support arm, a forehead support bracket and a coupling system. The support arm is associated with the mask shell. The coupling system attaches the support arm to the forehead support bracket such that the forehead bracket is detachable from the support arm while the mask is being worn by a patient. Raje shows this feature because its device is detachable by way of the first extending tab 310 and the second extending tab 315.

Regarding claims 14 and 15, Raje discloses in Figs. F1 and F4, a forehead support bracket (222) and a connector (224) associated with the forehead support bracket (222) adapted to connect a headgear strap (224) to the forehead bracket (222) such that the headgear strap (224) spans a length of a patient's forehead to define at least a portion of a cushion between the forehead support bracket and such a patient's forehead (Fig. F4).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 13, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raje in view of Kwok (WO 0078384). Regarding claim 5, Raje discloses a connecting assembly (326) which includes a tracking engaging member (col. 23, lines 18-32) associated with the forehead support. However, Raje does not

specifically teach an arcuate-shaped track. Kwok which also relates to a mask assembly having a forehead support teaches that it is known to design the connecting assembly having an arcuate shape (Fig. 1). Thus, it would have been obvious to one skilled in the art to modify the connecting member of Raje to have an arcuate shape for the purpose of enhancing the movement and adjustability as the mask is being donned by the user.

Regarding claims 13, 16 and 17, Raje fails to disclose wherein the connecting bracket is sized and configured to be removeably placed within a slot by passing through a cut at the predetermined angle, and wherein the connecting bracket is rotatable within the slot responsive to being positioned therein. However, Kwok also teaches, for instance, in the Abstract, that its frame (12) is adapted to pivot relative to the joining member (14). Thus, it would have been obvious to one skilled in the art to incorporate the slot design of Kwok with the device of Raje for the purpose of allowing the mask to be positioned to comfortably suit the particular topography of the wearer's face to ensure the mask is positioned ideally relative to the wearer's face.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinnatia Doster-Greene whose telephone number is 571-272-7143. The examiner can normally be reached on 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-271-7143.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ddg

Henry Bennett  
Supervisory Patent Examiner  
Group 3700